

AMENDED IN ASSEMBLY JULY 23, 2004

AMENDED IN SENATE MAY 25, 2004

AMENDED IN SENATE MAY 10, 2004

AMENDED IN SENATE MARCH 26, 2004

SENATE BILL

No. 1781

Introduced by Senator Knight

February 20, 2004

An act to add Chapter 6.5 (commencing with Section 12660) to Part 2 of Division 11 of the Health and Safety Code, and to add Section 12302.5 to the Penal Code, relating to pyrotechnic operators. An act to amend Section 13137 of, and to add Part 3 (commencing with Section 12750) to Division 11 of, the Health and Safety Code, and to amend Section 12301 of the Penal Code, relating to flamethrowing devices.

LEGISLATIVE COUNSEL'S DIGEST

SB 1781, as amended, Knight. Pyrotechnic operators.

Existing law provides for the licensing and oversight of pyrotechnic operators in the state, according to specified criteria. The State Fire Marshal is required to adopt regulations with respect to the licensing of pyrotechnic operators.

Existing law provides for the regulation of the sale, purchase, rental, lending, possession, transportation, storage, or use of, or manufacture, importation or exportation of, destructive devices, *which is* defined to include flamethrowing devices, by the Department of Justice.

This bill would ~~provide that the provisions of law governing delete flamethrowing devices from the definition of destructive devices do not apply to the possession or use of a flamethrowing device by the holder~~

~~of a special effects pyrotechnic operator's license first or second class issued by the State Fire Marshal, for purposes related to the production of theatrical, television, motion picture, or video productions, or entertainment events. It~~

This bill would require the State Fire Marshal to adopt regulations governing the possession and use of flamethrowing devices in this regard.

~~The bill would require a pyrotechnic operator subject to these provisions to, on an annual basis, submit an application to the State Fire Marshal for an endorsement, or renewal of an endorsement, for the possession and use of flamethrowing devices for these purposes, and to request, and pay any associated fees for, a background check from the Department of Justice, as part of the application. It would require the Department of Justice to perform the background check and report the results to the State Fire Marshal, and authorize the State Fire Marshal to endorse, or renew an endorsement of, the pyrotechnic operator's license if certain requirements are met. It would require the State Fire Marshal to deny or revoke the endorsement or renewal if the requirements are not met, and to seize any flamethrowing device in the possession of the pyrotechnic operator. It would prohibit the use or possession of a flamethrowing device without a valid permit issued by the State Fire Marshal pursuant to the bill and would make a violation of this prohibition a crime, and would also authorize the State Fire Marshal to impose fees in amounts sufficient to cover the costs incurred in the administration and enforcement of these provisions.~~

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~no~~ yes.

The people of the State of California do enact as follows:

- 1 ~~SECTION 1.—Chapter 6.5 (commencing with Section 12660)~~
- 2 *SECTION 1. Part 3 (commencing with Section 12750) is*
- 3 *added to Division 11 of the Health and Safety Code, to read:*
- 4

PART 3. FLAMETHROWING DEVICES

CHAPTER 1. DEFINITIONS AND SCOPE

12750. For purposes of this part, the following definitions shall apply:

(a) “Flamethrowing device” means any device designed or intended to emit or propel a burning stream of combustible or flammable liquid a distance of at least 10 feet.

(b) “Flammable liquid” means any liquid whose flashpoint is not more than 100 degrees Fahrenheit, when tested pursuant to Standard D56-70 of the American Society for Testing and Materials.

(c) “Permitholder” means a person who holds a flamethrowing device permit issued pursuant to this part.

CHAPTER 2. ADMINISTRATION

12755. No person shall use or possess a flamethrowing device without a valid flamethrowing device permit issued by the State Fire Marshal pursuant to this part.

12756. The State Fire Marshal shall adopt regulations to administer this part and establish standards for the background investigation of an applicant for, and holder of, a flamethrowing device permit, for the secure storage and transportation of a flamethrowing device, and for the supervision and control of the flamethrowing device by the permitholder. In adopting these regulations, the State Fire Marshal shall consult with the Department of Justice regarding regulations for the use and possession of destructive devices (Chapter 12.5 (commencing with Section 970) of Division 1 of Title 11 of the California Code of Regulations). These regulations for the use and possession of destructive devices may provide suggestions for potential methods to utilize in developing standards and shall serve as guidance only. At a minimum, the regulations adopted by the State Fire Marshal shall require a permitholder to possess a current, valid certificate of eligibility issued by the Department of Justice pursuant to paragraph (4) of subdivision (a) of Section 12071 of the Penal Code.

1 12757. *The State Fire Marshal may issue or renew a permit*
2 *to use and possess a flamethrowing device only if all of the*
3 *following conditions are met:*

4 (a) *The applicant or permitholder is not addicted to any*
5 *controlled substance.*

6 (b) *The applicant or permitholder possesses a current, valid*
7 *certificate of eligibility issued by the Department of Justice*
8 *pursuant to paragraph (4) of subdivision (a) of Section 12071 of*
9 *the Penal Code.*

10 (c) *The applicant or permitholder meets the other standards*
11 *specified in regulations adopted pursuant to Section 12756.*

12 12758. (a) *If the State Fire Marshal denies an application*
13 *for, or the renewal of, or revokes a flamethrowing device permit,*
14 *the applicant for a flamethrowing device permit or permitholder*
15 *shall be entitled to a hearing conducted in accordance with*
16 *Chapter 5 (commencing with Section 11500) of Part 1 of Division*
17 *3 of Title 2 of the Government Code.*

18 (b) *The State Fire Marshal shall revoke a flamethrowing device*
19 *permit if the permitholder does not comply with the requirements*
20 *of this part and the regulations adopted pursuant to this part.*

21 12759. *The State Fire Marshal shall establish fees pursuant*
22 *to this part that shall be deposited in the State Fire Marshal*
23 *Licensing and Certification Fund.*

24
25 CHAPTER 3. ENFORCEMENT AND PENALTIES
26

27 12760. *The State Fire Marshal shall seize any flamethrowing*
28 *device in the possession of any person who does not have a valid*
29 *flamethrowing device permit issued pursuant to this part.*

30 12761. *Any person who uses or possesses any flamethrowing*
31 *device without a valid flamethrowing device permit issued*
32 *pursuant to this part is guilty of a public offense and, upon*
33 *conviction, shall be punished by imprisonment in the county jail*
34 *for a term not to exceed one year, or in the state prison, or by a fine*
35 *not to exceed ten thousand dollars (\$10,000), or by both*
36 *imprisonment and fine.*

37 SEC. 2. *Section 13137 of the Health and Safety Code is*
38 *amended to read:*

39 13137. (a) *The State Fire Marshal Licensing and*
40 *Certification Fund is hereby created in the State Treasury. All*

money in the fund is available for the support of the State Fire Marshal upon appropriation by the Legislature. All moneys collected by the State Fire Marshal pursuant to this part, pursuant to Part 2 (commencing with Section 12500) or Part 3 (commencing with Section 12750) of Division 11, and pursuant to Section 41961, shall be deposited in the fund and shall be available to the State Fire Marshal for expenditure upon appropriation by the Legislature for the purposes of this part, Part 2 (commencing with Section 12500) or Part 3 (commencing with Section 12750) of Division 11, or Section 41961, respectively.

(b) Neither this article nor any provision of this part or Part 2 (commencing with Section 12500) or Part 3 (commencing with Section 12750) of Division 11 or Section 41961 authorize fees to exceed the actual cost of administration of the programs administered by the State Fire Marshal, nor authorize the charging of fees to a particular group being regulated under a program, for the costs of regulation under another program or for the costs of a different group under the same program.

SEC. 3. Section 12301 of the Penal Code is amended to read:

12301. (a) The term “destructive device,” as used in this chapter, shall include any of the following weapons:

(1) Any projectile containing any explosive or incendiary material or any other chemical substance, including, but not limited to, that which is commonly known as tracer or incendiary ammunition, except tracer ammunition manufactured for use in shotguns.

(2) Any bomb, grenade, explosive missile, or similar device or any launching device therefor.

(3) Any weapon of a caliber greater than 0.60 caliber which fires fixed ammunition, or any ammunition therefor, other than a shotgun (smooth or rifled bore) conforming to the definition of a “destructive device” found in subsection (b) of Section 179.11 of Title 27 of the Code of Federal Regulations, shotgun ammunition (single projectile or shot), antique rifle, or an antique cannon. For purposes of this section, the term “antique cannon” means any cannon manufactured before January 1, 1899, which has been rendered incapable of firing or for which ammunition is no longer manufactured in the United States and is not readily available in the ordinary channels of commercial trade. The term “antique rifle” means a firearm conforming to the definition of an “antique

1 firearm” in Section 179.11 of Title 27 of the Code of Federal
2 Regulations.

3 (4) Any rocket, rocket-propelled projectile, or similar device of
4 a diameter greater than 0.60 inch, or any launching device therefor,
5 and any rocket, rocket-propelled projectile, or similar device
6 containing any explosive or incendiary material or any other
7 chemical substance, other than the propellant for such device,
8 except such devices as are designed primarily for emergency or
9 distress signaling purposes.

10 (5) Any breakable container which contains a flammable liquid
11 with a flashpoint of 150 degrees Fahrenheit or less and has a wick
12 or similar device capable of being ignited, other than a device
13 which is commercially manufactured primarily for the purpose of
14 illumination.

15 (6) Any sealed device containing dry ice (CO₂) or other
16 chemically reactive substances assembled for the purpose of
17 causing an explosion by a chemical reaction.

18 ~~(7) Any device designed or intended to emit or propel a burning~~
19 ~~stream of combustible or flammable liquid a distance of 10 feet or~~
20 ~~more.~~

21 (b) The term “explosive,” as used in this chapter, shall mean
22 any explosive defined in Section 12000 of the Health and Safety
23 Code.

24 *SEC. 4. No reimbursement is required by this act pursuant to*
25 *Section 6 of Article XIII B of the California Constitution because*
26 *the only costs that may be incurred by a local agency or school*
27 *district will be incurred because this act creates a new crime or*
28 *infraction, eliminates a crime or infraction, or changes the penalty*
29 *for a crime or infraction, within the meaning of Section 17556 of*
30 *the Government Code, or changes the definition of a crime within*
31 *the meaning of Section 6 of Article XIII B of the California*
32 *Constitution.*

33 ~~is added to Part 2 of Division 11 of the Health and Safety Code, to~~
34 ~~read:~~

35

36 ~~CHAPTER 6.5. FLAMETHROWING DEVICES~~

37

38 ~~12660. (a) The State Fire Marshal shall adopt regulations~~
39 ~~governing the possession and use of flamethrowing devices, as~~
40 ~~described in paragraph (7) of subdivision (a) of Section 12301 of~~



1 the Penal Code, by the holder of a pyrotechnic operator's license
2 first or second class issued pursuant to Section 12578, for purposes
3 related to the production of theatrical, television, motion picture,
4 or video productions, or entertainment events.

5 (b) The regulations adopted pursuant to subdivision (a) shall be
6 similar to regulations adopted by the Department of Justice
7 relating to the possession and use of destructive devices under
8 Chapter 12.5 (commencing with Section 970) of Division 1 of
9 Title 11 of the California Code of Regulations.

10 12661. (a) A pyrotechnic operator subject to this chapter
11 shall, on an annual basis, submit an application to the State Fire
12 Marshal, in the form required by the State Fire Marshal, for an
13 endorsement, or renewal of an endorsement, authorizing the
14 possession or use, or both, by the licensed pyrotechnic operator of
15 a flamethrowing device for purposes related to the production of
16 theatrical, television, motion picture, or video productions, or
17 entertainment events.

18 (b) As part of the application for endorsement, the applicant
19 shall request a background check from the Department of Justice
20 and pay any fees associated with the background check.

21 (c) The Department of Justice shall perform the background
22 check and report the results to the State Fire Marshal.

23 (d) If the background check is returned showing no felonies
24 and if the applicant is not a person described in paragraph (2) or
25 (3) of subdivision (b) of Section 12305 of the Penal Code, the State
26 Fire Marshal may endorse, or renew an endorsement of, the
27 pyrotechnic operator's license.

28 (e) (1) If the background check is returned showing a
29 conviction for a felony or if the applicant is a person described in
30 paragraph (2) or (3) of subdivision (b) of Section 12305 of the
31 Penal Code, no endorsement shall be made or renewed, and any
32 existing endorsement shall be revoked. Any flamethrowing device
33 in the possession of a pyrotechnic operator whose endorsement or
34 renewal has been denied or revoked shall be seized by the State
35 Fire Marshal.

36 (2) An applicant whose endorsement or renewal has been
37 denied or revoked pursuant to this subdivision shall be entitled to
38 a hearing conducted in accordance with Chapter 5 (commencing
39 with Section 11500) of Part 1 of Division 3 of Title 2 of the
40 Government Code.

1 ~~(f) The State Fire Marshal may impose fees upon applicants in~~
2 ~~amounts sufficient to cover the costs incurred in the administration~~
3 ~~and enforcement of this chapter.~~

4 ~~SEC. 2. Section 12302.5 is added to the Penal Code, to read:~~

5 ~~12302.5. This chapter does not apply to the possession or use~~
6 ~~of a flamethrowing device, as described in paragraph (7) of~~
7 ~~subdivision (a) of Section 12301, by the holder of a special effects~~
8 ~~pyrotechnic operator's license first or second class issued pursuant~~
9 ~~to Section 12578 of the Health and Safety Code, for purpose~~
10 ~~related to the production of theatrical, television, motion picture,~~
11 ~~or video productions, or entertainment events.~~

